

Message Text

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ORIGIN L-03

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FCSC - MR. ROGERS
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EUR/CE - MR. WOESSNER
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FM SECSTATE WASHDC
TO AMEMBASSY BONN PRIORITY
INFO AMEMBASSY BERLIN
USMISSION USBERLIN

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E.O. 11652: GDS

TAGS: PFOR, FRG, US

SUBJECT: OVERLAPPING CLAIMS

1. AS EMBASSY IS AWARE, THE FRG FEDERAL EQUALIZATION OFFICE HAS SUSPENDED PAYMENTS TO AMERICAN NATIONALS REGARDING "BFG CLAIMS", ON THE THEORY THAT SUCH NATIONALS MAY EVENTUALLY RECEIVE SOME COMPENSATION FROM THE GDR AS A RESULT (A) OF ADJUDICATION OF PROPERTY CLAIMS AGAINST THE GDR BY THE FOREIGN CLAIMS SETTLEMENT COMMISSION AND (B) SATISFACTION OF SUCH JUDGMENTS, IN WHOLE OR PART, BY A SETTLEMENT BETWEEN THE GDR AND USG OF CLAIMS OF AMERICAN NATIONALS AGAINST THE GDR. THE FRG HAS DONE THIS DESPITE THE FACT THAT IT WILL BE SOME YEARS BEFORE THE
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FCSC COMPLETES ITS ADJUDICATION AND, MORE, WHILE IT IS CONJECTURAL WHETHER ANY, AND IF SO WHAT, SETTLEMENT CAN BE NEGOTIATED BETWEEN THE USG AND GDR. THE RESULT OF THIS FRG ACTION IS TO DO MATERIAL INJUSTICE TO CLAIMANTS WHO HAVE HAD MORE THAN THEIR SHARE OF INJUSTICE.

2. EMBASSY IS FURTHER AWARE OF A PROPOSED APPROACH

WHICH WOULD PERMIT THE FRG TO LIFT ITS SUSPENSION OF PAYMENTS WITHOUT PREJUDICE TO THE ULTIMATE POSITION, ORIGINATED BY FCSC GENERAL COUNSEL MCCLELLAN AND PUT TO

FRG AUTHORITIES BY THE CONFERENCE ON JEWISH MATERIAL CLAIMS. TO OUR KNOWLEDGE, THE FRG AUTHORITIES HAVE NOT EXPRESSED A REACTION TO THIS APPROACH.

3. IT HAS RECENTLY COME TO THE DEPARTMENT'S ATTENTION, HOWEVER, THAT, ON SEPTEMBER 13, 1977, IN THE CASE OF FREYMUTH V. LANDBERLIN, VG-IX A 272-77, A GERMAN COURT OF FIRST INSTANCE HELD THAT THE SUSPENSION OF PAYMENTS BY THE FEDERAL EQUALIZATION OFFICE WAS UNJUSTIFIED AND SHOULD BE LIFTED. WE UNDERSTAND THAT THIS RULING WILL BECOME EFFECTIVE ONLY IF NO APPEAL IS TAKEN OR IF AN APPEAL IS DISALLOWED; THAT PERMISSION MAY HAVE TO BE SOUGHT TO TAKE AN APPEAL; AND THAT THAT PROCESS AND THAT OF APPEAL COULD TAKE CONSIDERABLE TIME, DURING WHICH SUSPENSION OF PAYMENTS WOULD BE MAINTAINED. SO FAR AS DEPT IS AWARE, TIME WITHIN WHICH APPEAL PROCEEDINGS MUST BE INITIATED HAS NOT YET RUN, THOUGH IT SOON MAY.

4. IN VIEW OF FOREGOING, REQUEST EMBASSY PROMPTLY TO CONVEY TO FONOFF AND RESPONSIBLE FRG EQUALIZATION OFFICE OFFICIALS FOLLOWING:

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(A) USG IS SERIOUSLY CONCERNED AT THE INEQUITY VISITED UPON AMERICAN NATIONALS BY REASON OF SUSPENSION OF PAYMENTS TO THEM BY FEDERAL EQUALIZATION OFFICE, AND HOPES THAT EARLY STEPS WILL BE TAKEN BY THE FRG, IN THE HUMANITARIAN SPIRIT WHICH HAS CHARACTERIZED ITS HANDLING OF REPARATIONS PAYMENTS, TO RESUME PAYMENTS TO THEM.

(B) IN THIS REGARD, USG HAS BEEN GRATIFIED TO LEARN OF THE HOLDING IN FREYMUTH V. LANDBERLIN, WHICH IT UNDERSTANDS SUPPORTS RESUMPTION OF PAYMENTS. IT VENTURES TO EXPRESS THE HOPE THAT FRG EXECUTIVE AUTHORITIES WILL NOT APPEAL THIS RULING BUT RATHER ACCEPT AND IMPLEMENT IT AND THEREBY USE THIS CONSTRUCTIVE AVENUE OUT OF A SITUATION WHICH OTHERWISE IS DIFFICULT.

5. FYI SINCE OUR IMMEDIATE OBJECTIVE IS SPELLED OUT IN PRECEDING PARA., YOU SHOULD NOT TAKE INITIATIVE IN SEEKING A RESPONSE NOW TO MODUS VIVENDI NOTED IN PARA. 2 OF THIS MESSAGE. HOWEVER, WE WOULD BE INTERESTED IN ANY REACTION TO IT FRG TAKES INITIATIVE TO EXPRESS. AT BEST, THAT FALLBACK PRESENTS CONSIDERABLE COMPLICATIONS WHICH WE WOULD MUCH PREFER TO AVOID BY FRG ACCEPTANCE

OF THE FREYMUTH DECISION. END FYI. VANCE

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